F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	2/23/09		
SPONSOR	Cisneros	**LAST UPDATED**		**HB**	
SHORT TITLE	Local Option Hospitality Liquor Tax Act			**SB**	578
				ANALYST	Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	$0.1	3,163.0	Recurring	Municipal Funds*
	$0.1	98.0	Recurring	General Fund**

(Parenthesis ( ) Indicate Revenue Decreases)

*Municipal funds for “economic development projects”, public transportation, and other uses stated in the bill.

**TRD administrative fees are forwarded to the state general fund

Duplicates HB556

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but substantial	Indeterminate but substantial		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Regulation and Licensing Department (RLD)

Higher Education Department (HED)

Tourism Department (TD)

SUMMARY

Synopsis of Bill

Senate Bill 578 creates a new local option hospitality liquor excise tax that municipalities with a population of less than 15,000 may impose. The new 2 percent tax would be imposed on the retail cost of each drink or open container of alcohol sold or served on a licensee's premises. The Taxation and Revenue Department would retain 3 percent of the revenue from this new tax as an administrative fee.

The revenue from the hospitality liquor excise tax shall be distributed as follows:

- A minimum of 50 percent shall fund the economic development projects identified by the governing body and submitted to the voters
- A minimum of 10 percent shall be used to fund public transportation
- No more than 20 percent may be used for tourism marketing
- Up to 5 percent may be used to provide staff to the special authority board and to administer the funds
- Up to 75 percent to the payment of costs of issuing, payment of principal and interest of hospitality liquor excise tax revenue bonds

This bill also includes information about the issuance of revenue bonds in accordance with this act.

An ordinance may be enacted by the majority of members of a governing body of a municipality, and the ordinance must be voted upon by registered voters within the municipality. The bill sets forth specific requirements for the election and for when the tax would become effective after being voted upon.

Because no effective date is provided in the bill, its provisions will become effective June 19, 2009, ninety (90) days after the 2009 legislative session adjourns.

FISCAL IMPLICATIONS

Assuming *all* eligible municipalities were to impose the tax, the potential full year impact is shown in the revenue table on page 1 of this analysis under FY11. Because this bill requires the governing body of a county to impose an ordinance imposing the tax and that ordinance will only become effective after voter approval, it is unlikely that this tax will be imposed prior to calendar year 2010 but there is a possibility of an impact in FY10.

The revenue impact illustrates the extreme case where *all* eligible municipalities impose the tax. Based on liquor excise data, per capita liquor consumption in New Mexico is 436 drinks per year. It is estimated that 24.6 percent of all drinks consumed are served "on-premise" [1] and it is assumed that 90 percent of those "on-premise" drinks are sold by licensees within municipalities. Based on the most recent U.S. census data, the total population of all qualifying municipalities accounts for 21.3 percent of the total municipal population in New Mexico. An average drink price of $4.00 gives a tax base of $163 million and total revenue from the tax of $3.26 million.

---

[1] Information from the Distilled Spirits Council indicates that approximately 24.6% of distilled spirits consumption in the U.S. is attributable to "on-premise" volumes.

This tax is estimated to grow at the same rate as the population growth rate for the municipality. The population growth for these small qualifying municipalities has been zero and thus there is no growth expected for this tax.

SIGNIFICANT ISSUES

Since this bill defines a municipality as one with a population of less than fifteen thousand, only the State's 12 larges cities would be ineligible (Albuquerque, Las Cruces, Santa Fe, Rio Rancho, Roswell, Farmington, Alamogordo, Clovis, Hobbs, Carlsbad, Gallup, and Los Alamos).

ADMINISTRATIVE IMPLICATIONS

TRD:
If *any* municipality chooses to impose the tax, then this proposal would have a high administrative impact on the Department including high revenue processing and audit impacts, and moderate systems impacts.

This bill would create an entirely new tax program, requiring new forms, instructions and publications. Website and internet information would need to be implemented. Gentax, scanners, remittance equipment and data entry would need to develop programs to accommodate the new tax. Education of taxpayers and training of staff would need to be implemented. Revenue distribution procedures would be required. At least 3 new FTE would be needed upon implementation of the new excise tax, and that number could expect to grow as additional municipalities implement the tax.

Audit coverage for this tax would be difficult, and generally less than cost-effective. Any audit resources expended on the tax would probably come at the expense of more productive audits of larger taxpayers.

This bill will have a moderate impact on computer system development. A new tax program will need to be added to GenTax.
1) Changes to the pipeline for E-DCR and Wausau capture for the new tax program - 320 hours
2) Changes to GenTax configuration for the new tax program – 160 hours
3) Changes to revenue accounting – 80 hours
4) Changes to TAP and NMWebFile – 160 hours
Total systems impact: 720 hours

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity***: *taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

Administration of this tax might be better implemented by the local government authority, rather than by the Department. Municipal authorities would have more knowledge of local businesses, and more interest in assuring tax compliance. Taxes similar to this tax implemented in other parts of the country are often administered by county governments.

DUPLICATION

This bill duplicates House Bill 556.

TECHNICAL ISSUES

TRD:
Section 6, Subsection A (page 8) requires the municipality to "provide no more than five hundred dollars from the net tax revenue" to give to each licensee to upgrade and reprogram registers to collect the tax. This could be a violation of the anti-donation clause, N.M. Const. Art. IX, § 14.

On page 3, lines 21 – 22, the tax rate of 2% of the "retail *cost* of the drink … sold or served to a consumer" might be clearer if "retail cost" were replaced by "retail price paid".

Section 2 (page 2, line 24 through page 3, line 2) and Section 11 (page 21, lines 5 through 8) defines qualified municipalities as those with "*a population of less than fifteen thousand people according to the 2000 federal decennial census or any federal decennial census completed after that year;*". Under this definition, municipalities that grow beyond a population of 15,000 in the future will continue to qualify to impose the tax. Only the state's 12 largest municipalities would be ineligible to impose the tax (Albuquerque, Las Cruces, Santa Fe, Rio Rancho, Roswell, Farmington, Alamogordo, Clovis, Hobbs, Carlsbad, Gallup and Los Alamos).

OTHER SUBSTANTIVE ISSUES

TD:
TD is concerned that the additional tax would have a negative impact on the state's restaurant and lodging industries. Restaurants employed 9.4 percent of the state's total workforce in 2007 and generated $2.7 billion in sales in 2007 (Source: Bureau of Business and Economic Research). New Mexico's lodging industry generated $33.5 million in lodgers' tax revenues to municipalities and counties in New Mexico in 2007 and provided nearly 30,000 jobs (Source: Tourism Association of NM).

BLG/mt